

**TITLE 16. DENTAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS**

NOTICE IS HEREBY GIVEN that the Dental Board of California (hereinafter "Board") is proposing to take the action described in the Informative Digest. Any person interested may present statements or arguments orally or in writing relevant to the action proposed at a hearing to be held at:

**Department of Consumer Affairs
2005 Evergreen Street, 1st Floor Hearing Room
Sacramento, California 95815
Tuesday, May 10, 2011
10:00 a.m.**

Written comments, including those sent by mail, facsimile, or e-mail to the addresses listed under Contact Person in this Notice, must be received by the Board at its office not later than 5:00 p.m. on May 9, 2011 or must be received by the Board at the hearing. The Board, upon its own motion or at the instance of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

Authority and Reference: Pursuant to the authority vested by Sections 315, 315.2, 315.4, and 1614 of the Business and Professions Code and Section 11400.20 of the Government Code, and to implement, interpret or make specific Sections 315, 315.2, and 315.4 of the Business and Professions Code and Sections 11400.20 and 11425.50(e) of the Government Code, the Board is considering changes to Division 10 of Title 16 of the California Code of Regulations as follows:

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The Board currently regulates a total of 72,866 licensees; consisting of 37,508 dentists, 34,084 registered dental assistants, and 1,277 registered dental assistants in extended functions. The Board's highest priority is the protection of the public when exercising its licensing, regulatory, and disciplinary functions. The primary methods by which the Board achieves this goal are: issuing licenses to eligible applicants; investigating complaints against licensees and disciplining licensees for violating the Dental Practice

Act (DPA); monitoring licensees whose licenses have been placed on probation; and managing the Diversion Program for licensees, whose practice may be impaired due to abuse of dangerous drugs or alcohol.

Business and Professions Code Section 1614 authorizes the Board to adopt, amend, or repeal, such rules and regulations as may be reasonably necessary to enable the Board to carry into effect the provisions of the Dental Practice Act.

Business and Professions Code Section 315 establishes the Substance Abuse Coordination Committee (SACC) within the Department of Consumer Affairs (Department) and required the SACC to formulate uniform and specific standards in sixteen specified areas for each healing arts board to use in dealing with substance-abusing licensees, whether or not a board chooses to have a formal diversion program.

Business and Professions Code Section 315.2 specifies that a healing arts board within the Department is required to order a licensee to cease practice if the licensee tests positive for any substance that is prohibited under the terms of the licensee's probation or diversion program. The section specifies that the cease practice order under this section does not constitute disciplinary action and is not subject to adjudicative hearings.

Business and Professions Code Section 315.4 authorizes healing arts boards within the Department to order a licensee on probation or in a diversion program to cease practice for major violations and when the board orders a licensee to undergo a clinical diagnostic evaluation pursuant to the uniform and specific standards adopted and authorized under Section 315. The section specifies that the cease practice order under this section does not constitute disciplinary action and is not subject to adjudicative hearings.

The main purpose for amending the regulation is to update the *Dental Board of California Disciplinary Guidelines with Model Language, Revised 08/30/2010*, that is incorporated by reference in Section 1018, by using the uniform standards developed by the SACC in probationary orders and to specify that it is the Diversion Evaluation Committee's duty and responsibility to consider the uniform standards contained within the incorporated document in creating treatment rehabilitation plans for licensees entering the impaired licentiates program. The Board uses the Disciplinary Guidelines when taking action to suspend, revoke, or place a license on probation. The proposed changes are necessary to aid the Board in the discipline of substance abusing licensees to provide better public protection.

The Board is proposing the following changes:

Amend Article 4.5 and Section 1018 of Division 10 of Title 16 of the California Code of Regulations (Uniform Standards Related to Substance Abuse and Disciplinary Guidelines)

The title of Article 4.5 and the title of Section 1018 would be changed from “Disciplinary Guidelines” to “Uniform Standards Related to Substance Abuse and Disciplinary Guidelines”. The title of the incorporated document would be changed from “Dental Board of California Disciplinary Guidelines with Model Language” to “Dental Board of California Uniform Standards Related to Substance Abuse and Disciplinary Guidelines with Model Language”. The incorporated document’s revision date would be changed from August 30, 2010 to February 25, 2011.

Amend Section 1020.5 of Division 10 of Title 16 of the California Code of Regulations (Diversion Evaluation Committee Duties and Responsibilities)

This proposal would amend Section 1020.5 to specify that the diversion evaluation committee’s duties and responsibilities include the consideration of the uniform standards contained within the “Dental Board of California Uniform Standards Related to Substance Abuse and Disciplinary Guidelines with Model Language”, revised February 25, 2011, when creating treatment rehabilitation plans for licensees entering the impaired licentiates program.

Amend the *Dental Board of California Disciplinary Guidelines with Model Language, Revised 08/30/2010*, that is incorporated by reference in Section 1018 of Division 10 of Title 16 of the California Code of Regulations to *Dental Board of California Uniform Standards Related to Substance Abuse and Disciplinary Guidelines With Model Language*, revised February 25, 2011

The document incorporated by reference would be amended to the uniform standards developed by the SACC and contained within the document entitled “*Uniform Standards Regarding Substance Abusing Healing Arts Licensees*”, dated April 2010.

Those proposed changes include:

- Amendments to the Title Page to reflect the addition of the uniform standards to the Disciplinary Guidelines and new revision date of February 25, 2011.
- Amendments to the Introduction to specify that the Board has adopted the recommended guidelines for disciplinary orders and conditions of probation for violations of the Dental Practice Act, as well as the uniform standards to be used for substance abusing licensees.

- Addition of Legal Authority to specify that the legal authority for the “Dental Board of California Uniform Standards Related to Substance Abuse and Disciplinary Guidelines with Model Language” revised February 25, 2011, is contained in Section 1018 of Title 16 of the California Code of Regulations.
- Addition of the uniform standards that should be used in all cases in which a license is placed on probation due to a substance abuse problem. Whether individual conditions are ordered however, is within the discretion of the Board. The uniform standards would include the following:
 1. Clinical Diagnostic Evaluation;
 2. Clinical Diagnostic Evaluation Report;
 3. Facilitated Group Support Meetings;
 4. Supervised Practice (Work Site Monitor Requirements);
 5. Major and Minor Violations; and
 6. Drug Testing Standards.
- Proposed technical grammatical and punctuation corrections and technical non-substantive amendments to the following sections:
 1. Factors to Be Considered
 2. Other Situations in Which Revocation is the Recommended Penalty
 3. Probation Terms and Conditions
 4. List of Standard Probationary Terms and Conditions
 5. List of Additional Probationary Terms and Conditions
- Amendments to the “List of Additional Probationary Terms and Conditions” to add (35) Facilitated Group Support Meetings and (36) Clinical Diagnostic Evaluation to the list of additional probation conditions.
- Amendments of Standard Probation Condition (14) Notification to use the uniform standards of the SACC.
- Addition of introductory language under the heading of “Additional Conditions of Probation Model Language” to specify that the additional probationary conditions may be imposed depending on the nature of the violation(s) and that some of the additional probationary conditions should be applied to substance abusing licensees in consideration of the SACC’s uniform standards.
- Amendment of Additional Probation Condition (18) Supervised Practice to use the uniform standards of the SACC.

- Amendment of Additional Probation Condition (26) Diversion Program to use the uniform standards of the SACC.
- Amendment of Additional Probation Condition (27) Biological Testing to use the uniform standards of the SACC.
- Amendment of Additional Probation Condition (28) Abstain from Use of Alcohol, Controlled Substances, and Dangerous Drugs to use the uniform standards of the SACC.
- Addition of Additional Probation Condition (35) Facilitated Group Support Meetings to use the uniform standards of the SACC.
- Addition of Additional Probation Condition (36) Clinical Diagnostic Evaluation to use the uniform standards of the SACC.
- Amendments to the Recommended Penalties to add (35) Facilitated Group Support Meetings and (36) Clinical Diagnostic Evaluation to the list of additional probation conditions in consideration of the SACC's uniform standards. as the recommended penalty for the following violations:
 - Section 1680(m) B&P - Violation of any Law Regulating the Dispensing or Administration of Dangerous Drugs or Controlled Substances
 - Section 1681(a) B&P - Substance Abuse, Possession or Control, Alcohol Abuse, or Conviction related to Controlled Substances
 - Section 1681 (b) B&P - Use of drugs/alcohol causing danger to patient
 - Section 1681 (c) B&P - Conviction of violating state drug statutes

FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None

Nondiscretionary Costs/Savings to Local Agencies: None

Local Mandate: None

Cost to Any Local Agency or School District for Which Government Code Sections 17500 - 17630 Require Reimbursement: None

Business Impact:

The Board has made an initial determination that the amendment of this regulation may have a significant, statewide adverse economic impact directly affecting business, including the inability of California businesses to compete with businesses in other States.

The following types of businesses would be affected:

- Businesses owned by licensees of the Board who face disciplinary action.
- Businesses that employ licensees of the Board who face disciplinary action.

The Board currently regulates a total of 72,866 licensees, including 37,508 dentists, 34,084 registered dental assistants, and 1,277 registered dental assistants in extended functions.

A license that has been revoked, suspended, reprimanded or placed on probation may cause a significant fiscal impact on the business where the licensee worked depending on the nature and severity of the violation. A business owned by a licensee who faces disciplinary action may incur a significant fiscal impact depending on the nature and severity of the violation. The Board does not maintain data relating to the number or percentage of licensees who own a business; therefore the number or percentage of businesses that may be impacted cannot be predicted. The Board only has authority to take administrative action against a licensee and not a business. Accordingly, the initial or ongoing costs for a small business owned by a licensee who is the subject of disciplinary action cannot be projected. Businesses operated by licensees who are in compliance with the law will not incur any fiscal impact.

Probationers are responsible for paying the costs of the diversion program, clinical diagnostic evaluations, biological testing, and facilitated group support meetings as terms of probation. The average salary of a practicing dentist in California is approximately \$150,000 per year and the average salary of a practicing registered dental assistant in California is approximately \$35,000 per year.

The cost of Biological Testing may have the most significant impact. The average current rate of a urine analysis is \$45 per test, plus an average collection fee of \$25, for a total average cost of \$70 per urine test. A probationer ordered to comply with the Biological Testing condition would incur an expense of approximately \$7,300 for the first year (104 tests for the first year) and approximately \$3,500 per year for the duration of the probationary term (minimum of 50 tests per year for the

subsequent probationary years). The average cost of the first year of biological testing is approximately one-fifth of a registered dental assistant's average salary.

If the 104-time per year testing requirement results in a probationer's inability to participate in the testing program, the Board will send the case to the Office of the Attorney General to pursue revocation for the probationer's failure to comply with the Biological Testing term and condition. The Board anticipates up to 18 new probationers established each year, will be subject to the new testing requirements. The Board anticipates that at least half of the probationers will not be able to afford the cost of the testing frequency and will result in the Board's pursuit of revocation of the probationer's license. The Board estimates it will incur an estimated annual cost of \$45,000 for the prosecution and hearing costs associated with the revocation of nine probationers.

The Dental Board of California has not considered proposed alternatives that would lessen any adverse economic impact on business and invites you to submit proposals. Submissions may include the following considerations:

- i. The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to businesses.
- ii. Consolidation or simplification of compliance and reporting requirements for businesses.
- iii. The use of performance standards rather than prescriptive standards.
- iv. Exemption or partial exemption from the regulatory requirements for businesses.

Impact on Jobs/New Businesses:

The Board has determined that this regulatory proposal would have an impact on the creation of jobs or new businesses or the elimination of jobs or existing businesses or the expansion of businesses in the State of California.

A license that has been revoked, suspended, reprimanded or placed on probation may cause a significant fiscal impact on the business where the licensee worked depending on the nature and severity of the violation. A business owned by a licensee who faces disciplinary action may incur a significant fiscal impact depending on the nature and severity of the violation. Licensees who are in compliance with the law will not incur any fiscal impact.

Cost Impact on Representative Private Person or Business:

The cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action and that are known to Board are:

A license that has been revoked, suspended, reprimanded or placed on probation may cause a significant fiscal impact on the business where the licensee worked depending on the nature and severity of the violation. A business owned by a licensee who faces disciplinary action may incur a significant fiscal impact depending on the nature and severity of the violation. The Board does not maintain data relating to the number or percentage of licensees who own a business; therefore the number or percentage of businesses that may be impacted cannot be predicted. The Board only has authority to take administrative action against a licensee and not a business. Accordingly, the initial or ongoing costs for a small business owned by a licensee who is the subject of disciplinary action cannot be projected. Businesses operated by licensees who are in compliance with the law will not incur any fiscal impact.

Effect on Housing Costs: None

EFFECT ON SMALL BUSINESS

The Board has determined that the proposed regulation may affect small businesses. The Board only regulates activities that appear to affect small businesses as defined in California Government Code Section 14837.

A license that has been revoked, suspended, reprimanded or placed on probation may cause a significant fiscal impact on the small business where the licensee works depending on the nature and severity of the violation. A small business owned by a licensee who faces disciplinary action may incur a significant fiscal impact depending on the nature and severity of the violation. The Board does not maintain data relating to the number or percentage of licensees who own a small business; therefore the number or percentage of small businesses that may be impacted cannot be predicted. The Board only has authority to take administrative action against a licensee and not a small business. Accordingly, the initial or ongoing costs for a small business owned by a licensee who is the subject of disciplinary action cannot be projected. Small businesses operated by licensees who are in compliance with the law will not incur any fiscal impact.

CONSIDERATION OF ALTERNATIVES

The Board must determine that no reasonable alternative it considered to the regulation or that has otherwise been identified and brought to its attention would either be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposal described in this Notice.

Any interested person may present statements or arguments orally or in writing relevant to the above determinations at the above-mentioned hearing.

INITIAL STATEMENT OF REASONS AND INFORMATION

The Board has prepared an initial statement of the reasons for the proposed action and has available all the information upon which the proposal is based.

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations and of the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained at the hearing or prior to the hearing upon request from the Dental Board of California at 2005 Evergreen Street, Suite 1550, Sacramento, California 95815.

AVAILABILITY AND LOCATION OF THE FINAL STATEMENT OF REASONS AND RULEMAKING FILE

All the information upon which the proposed regulations are based is contained in the rulemaking file which is available for public inspection by contacting the person named below.

You may obtain a copy of the final statement of reasons once it has been prepared, by making a written request to the contact person named below or by accessing the website listed below.

CONTACT PERSON

Inquiries or comments concerning the proposed rulemaking action may be addressed to:

Name:	Sarah Wallace, Legislative and Regulatory Analyst
Address:	2005 Evergreen Street, Suite 1550 Sacramento, CA 95815
Telephone No.:	(916) 263-2187
Fax No.:	(916) 263-2140
E-Mail Address:	Sarah.Wallace@dca.ca.gov

The backup contact person is:

Name: Richard DeCuir, Executive Officer
Address: 2005 Evergreen Street, Suite 1550
Sacramento, CA 95815
Telephone No.: (916) 263-2300
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E-Mail Address: Richard.DeCuir@dca.ca.gov

Website Access: Materials regarding this proposal can be found at the Board's Web site at: <http://www.dbc.ca.gov/lawsregs/index.shtml>.